

### **REMARKS**

Claims 1-17 are currently pending in the application. Claims 1, 7, and 12 are in independent form. Claims 1, 7, and 12 have been amended to include limitations in claims 2, 8, and 13. Claims 2, 8, and 13 are herein canceled without prejudice.

The specification is objected to because it does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). In response thereto, the specification does in fact have an abstract, as the published application shows an abstract. The specification is also objected to because on page 6, line 14, the word “eon” should be replaced with “on”. This has been corrected. Reconsideration of the objections is respectfully requested.

The drawings stand objected to because the specification refers to Fig 1A, 2A and 2B but the drawings are mislabeled as Fig 1A, 1A and 1B. In response thereto, replacement drawings are submitted with the correct labels. The drawings are objected to as including reference character 16 not mentioned in the specification. In response thereto, it is noted that reference character 16 is the “opposite end” and is in fact described in the specification. See paragraph 26:

[0026] The catheter 10 of the present invention can be any catheter known to those of skill in the art. The catheter 10 includes an insertion end 14, **an opposite end 16**, and a lumen 18 extending therebetween. A modified tip 12 includes a ring 20, formed of a hydrophilic material, which is attached to the insertion end 14 of the catheter 10. The tip 12 extends radially outwardly from the catheter 10, forming a platform structure. The hydrophilic material is able to expand up to three times its original dimensions, thereby expanding the platform. The ring 20 creates a sufficient platform at the base of a wide neck aneurysm. The insertion end 14 of the catheter

10 is made of a material known to those of skill in the art to be sufficient to create a platform.

Reconsideration of the objection of the drawings is respectfully requested.

Claims 1-3, 6-9, 12-14, and 17 stand rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent Application Publication No. 2002/0042628 to Chin, et al. Specifically, the Office Action holds that Chin, et al. shows a catheter including an end portion having a platform or a radially outwardly expandable ring attached to the insertion end of the catheter extending substantially radially outwardly therefrom with a lumen having an insertion end and an opposite end. Chin, et al. shows an expandable ring capable of being attached to a catheter. Reconsideration of the rejection under 35 U.S.C. § 102(b), as anticipated by Chin, et al., as applied to the claims, is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

Chin, et al. discloses a neck occlusion device 10 that includes outer tubular member 12, inner tubular member 14, and mesh portion 16 that is attached at a distal portion 20 of inner tubular member 14 and a distal portion 24 of outer tubular member 12. Mesh portion 16 is made of braided or woven filaments or fibers that

are relatively flexible. Therefore, by moving tubes 12 and 14 relative to one another, the mesh portion 16 is deployed radially.

In contradistinction, the present invention as claimed in the amended independent claims requires that the expanding platform on the end portion of the catheter be formed of a biocompatible expandable material that expands *in situ*. In other words, no action is required of the surgeon moving the tubes to expand the platform as in Chin, et al., as the platform expands itself once in the proper environment.

Therefore, since Chin, et al. does not disclose a platform formed of a biocompatible expandable material that expands *in situ* as set forth in the presently pending independent claims, the claims are patentable over Chin, et al. and reconsideration of the rejection is respectfully requested.

Claims 4-5, 10-11, 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chin, et al. in view of U.S. Patent No. 5,258,042 to Mehta, et al. Specifically, the Office Action holds that Chin, et al. discloses an expandable material but does not disclose one that is hydrophilic or a hydrogel, and Mehta, et al. discloses an expandable material that is a hydrophilic hydrogel. Therefore, the Office Action holds that it would be obvious to one skilled in the art to modify Chin, et al.'s material with the material used by Mehta, et al. in order to easily swell to full expansion. Reconsideration of the rejection under 35 U.S.C. §103(a), as being unpatentable over Chin, et al. in view of Mehta, et al. is respectfully requested.

“Any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed”; however, that reason must be present for the combination to be obvious. *KSR Intern Co. v.*

*Teleflex*, 127 S. Ct. 1727, 1742, U.S. (2007). This requirement was confirmed in *Takeda Chem. Indust., et al. v. Alphapharm*, No. 06-1329 (Fed. Cir. 2007).

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." MPEP Section 2143.

"The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art." *KSR International Co. v. Teleflex Inc.*, 83 UDPQ2d 1385, 1395 (2007) and MPEP Section 2143.

There is no reason in Chin, et al. to modify the materials used for the mesh portion 16. The materials disclosed were disclosed for a reason. One cannot physically expand hydrophilic hydrogel material by manipulating the inner and outer tubes 12 and 14. These materials expand *in situ* without manipulation by a surgeon. Changing the materials from other than flexible filaments or fibers would render the Chin, et al. catheter inoperable in the manner that it is disclosed to be used. Therefore, one skilled in the art would not combine the teachings of Chin, et al. with Mehta, et al. to change the materials of the expandable mesh portion 16.

Since neither the cited references alone or in combination with knowledge in the art suggest the currently claimed invention, it is consequently respectfully submitted that the claims are clearly patentable over the combination, even if the combination were to be applied in opposition to applicable law, and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above, and the prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

In view of the present amendment and foregoing remarks, reconsideration of the rejections and advancement of the case to issue are respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

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